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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re F.S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. F.S., Defendant and Appellant.	E054784 (Super.Ct.No. J240606) OPINION

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Affirmed.

Beth Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Andrew Mestman, and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

On July 1, 2010, a petition under Welfare and Institutions Code section 602 alleged that minor and appellant, F.S. (minor), violated Penal Code section 459 (residential burglary), on or about June 15, 2010; and Penal Code section 496, subdivision (a) (receiving stolen property), on or about June 18, 2010. On October 18, 2010, minor admitted that he violated Penal Code section 459, and the remaining charge was dismissed. The court then declared minor a ward of the court and placed him on probation.

On June 1, 2011, a subsequent petition was filed alleging that minor committed residential burglary under Penal Code section 459, on or about April 9, 2010. Minor again admitted that he violated Penal Code section 459. The case was transferred to San Bernardino County for disposition because minor resided there. At a disposition hearing on September 26, 2011, minor was ordered to continue on probation with modifications to the original terms of his probation. Specifically, the juvenile court modified probation term 2, which required minor to tell the probation officer where he last saw the guns that were reportedly stolen in the burglary. Defense counsel objected to the imposition of this condition.

Minor filed a timely notice of appeal. On appeal, minor contends that the juvenile court abused its discretion in imposing probation term 2. For the reasons set forth below, we disagree.

II

STATEMENT OF FACTS[1]

Facts related to the first petition: On June 15, 2010, minor's neighbor arrived home and found her bedroom had been ransacked. Minor's mother later found multiple items, including several pieces of jewelry, in her home; she confronted minor. Minor admitted taking the jewelry from his neighbor. The neighbor later identified the items as hers. Other valuables were never recovered.

Facts related to the second petition: On April 9, 2010, a victim returned home to find his house ransacked and various items missing, including six hunting rifles and two shotguns. Latent fingerprints were lifted near a broken kitchen window. Those fingerprints were found to match minor's fingerprints. Minor agreed with most details of the police report but denied any guns were taken.

III

ANALYSIS

Minor's sole contention on appeal is that probation condition 2, requiring him to provide information to probation about the whereabouts of the firearms in the April 9, 2010 burglary, violates his constitutional rights and is not reasonably related to the underlying offense.

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[1] Because minor pled guilty, the facts are taken from the probation officer's report.

A. Background

At the disposition hearing on September 26, 2011, the court directed minor "pursuant to [probation] term 2 [that] minor is to cooperate with [the] probation officer in providing information he knows about [the] last known location(s) of [the] gun(s)."

In ordering the conditions of probation, the juvenile court stated:

"I agree with the People this is very serious. Not only is it one of the most serious because it involves an innocent victim, this is a residential burglary and this person did absolutely nothing wrong to invite his house to be burglarized. In fact, it was probably someone at work, which means he is a true victim.

"I agree with the fact that because the minor is not very forthcoming with the offense, that it's likely to inhibit his rehabilitation.

"What I am inclined to do is specify that in term 2 when he is ordered to obey the probation officer and cooperate in a plan of rehabilitation, that means tell the probation officer where the guns are. I think that serves two purposes. One, it assists this minor in his rehabilitation. Two, it's necessary to protect the public. If there are between six and eight stolen guns on the street, I want the probation department in cooperation with local law enforcement to find those and seize them before they can be sold and used for notorious purposes. So that will be the order in term 2."

Defense counsel objected that minor had not admitted to taking the guns. The court, however, pointed out that the victim was present and had compiled a specific list of

the guns that were taken. Therefore, the court found minor's blanket denial to be unbelievable.

Defense counsel responded that minor should not have his probation violated if he does not know where the guns are presently located. Also, if the guns had been sold, minor would be potentially forced to incriminate himself.

The court responded that, at a minimum, minor would know where the guns were when he last saw them. Moreover, the court stated that because minor had already been placed in jeopardy for the burglary, he could not be prosecuted for stealing the guns in addition to the burglary.

B. Standard of Review

A juvenile court has broad discretion to fashion the terms and conditions of probation for a ward under its supervision; absent abuse, its decision will not be disturbed on appeal. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 6-7.) As in the case of adults, a probation condition will not be invalidated unless it "(1) has no relationship to the crime of which the offender was convicted; (2) relates to conduct which is not in itself criminal; *and* (3) requires or forbids conduct which is not reasonably related to future criminality." (*In re Todd L.* (1980) 113 Cal.App.3d 14, 18; see also *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*); *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627.)

Moreover, restrictive conditions may be imposed upon juveniles more freely than upon adults. (*In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1153.) "When a juvenile delinquency petition is sustained, the court assumes jurisdiction over the minor and has

the power to issue orders controlling the minor's conduct." (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1231-1232, citing Welf. & Inst. Code, §§ 601, 602, subd. (a).) "A juvenile probationer may be therefore subject to 'any and all reasonable conditions' the court 'may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' In deciding what probation conditions are appropriate, the court shall consider not only the circumstances of the offense but also the minor's entire social history." (*In re Juan G.*, *supra*, 112 Cal.App.4th at pp. 6-7, fns. omitted; see also *In re Todd L.*, *supra*, 113 Cal.App.3d at pp. 19-20.) A condition that requires a defendant to give up a constitutional right is not necessarily unconstitutional. (*Gilliam v. Municipal Court* (1979) 97 Cal.App.3d 704, 708.) Probation conditions that interfere with a probationer's exercise of constitutional rights have been upheld so long as they are narrowly drawn to achieve the important interests of public safety and rehabilitation, and are specifically tailored to the individual probationer. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084.)

C. There Was No Abuse of Discretion

First, we address minor's assertion that the probation condition violates his right against self-incrimination. In support, minor cites *Minnesota v. Murphy* (1984) 465 U.S. 420 (*Murphy*). The facts in this case are distinguishable from the facts in *Murphy*.

In *Murphy*, a defendant made incriminating statements while meeting with his probation officer. The terms of the defendant's probation required that he be truthful with his probation officer in all matters. The United States Supreme Court granted

certiorari to decide whether a statement made by a probationer to his or her probation officer with prior warnings is admissible in a subsequent criminal proceeding. (*Murphy*, *supra*, 465 U.S. at p. 425.) The Supreme Court held that if a state compels a probationer to make incriminating statements, those statements are inadmissible in a subsequent trial for a crime other than that for which he or she has been convicted. (*Id.* at pp. 426, 435.) The threat of a violation of probation, without more, does not constitute sufficient compulsion, and therefore, the probationer must invoke his or her Fifth Amendment rights if he wishes to preserve them. (*Id.* at pp. 433-434, 440.)

In sum, *Murphy* involved questions of whether incriminatory statements could be used in subsequent criminal proceedings and whether the Fifth Amendment privilege was self-executing or needed to be invoked. The Supreme Court noted the limitations of its holding in *Murphy* as it applied to compelled answers that are not used in future criminal cases, but to supervise a probationer while on probation. The court noted: "Just as there is no right to a jury trial before probation may be revoked, neither is the privilege against compelled self-incrimination available to a probationer. It follows that whether or not the answer to a question about a residential requirement is compelled by the threat of revocation, there can be no valid claim of the privilege on the ground that the information sought can be used in revocation proceedings." (*Murphy*, *supra*, 465 U.S. at p. 435, fn. 7.)

The court then went on to note:

"Our cases indicate, moreover, that a State may validly insist on answers to even incriminating questions and hence sensibly administer its probation system, as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination. Under such circumstances, a probationer's 'right to immunity as a result of his compelled testimony would not be at stake,' [citations], and nothing in the Federal Constitution would prevent a State from express condition of probation or from using the probationer's silence as 'one of a number of factors to be considered by the finder of fact' in deciding whether other conditions of probation have been violated." (*Murphy*, *supra*, 465 U.S. at p. 435, fn. 7.)

Therefore, under *Murphy*, there is no Fifth Amendment violation of the privilege against self-incrimination unless the answer might incriminate the defendant in a future criminal proceeding; a probation revocation proceeding is not such a criminal proceeding; and, even in situations where an answer is likely to incriminate, a probationer may be required to answer as long as the answer may not be used in a criminal proceeding.

In this case, minor fails to show how his answer about the last known whereabouts of the firearms would likely incriminate him in future criminal proceedings. Because minor already pled guilty to burglary, involving the firearms, the prosecution is foreclosed from charging minor with the theft of the firearms. (*Kellett v. Superior Court* (1966) 63 Cal.2d 822, 827; *In re R.L.* (2009) 170 Cal.App.4th 1339, 1343 [*Kellett* rule applies to juvenile proceedings].)

Notwithstanding, minor argues that the probation term is unconstitutional because "double jeopardy would not bar the prosecution of an offense that requires proof of an element that differs from the elements of [burglary]. . . . Minor could be charged with any offense that includes a distinct element from those specified in Penal Code section 459." However, "a State may validly insist on answers to even incriminating questions and hence sensibly administer its probation system, as long as it recognizes that the required answers may not be used in a criminal proceeding and thus eliminates the threat of incrimination." (*Murphy*, *supra*, 465 U.S. at p. 435, fn. 7.) Minor can raise this constitutional argument under *Murphy* should the issue arise in a future proceeding. Minor seems to argue that a "guarantee of immunity" is required. Nothing in *Murphy* states such a requirement.

Moreover, as noted above, probation conditions that interfere with a probationer's constitutional rights have been upheld so long as they are narrowly drawn to achieve the important interests of public safety and rehabilitation, and are specifically tailored to the individual probationer. (*In re Babak S.*, *supra*, 18 Cal.App.4th at p. 1084.) Here, the juvenile court clearly indicated that revealing the whereabouts of the firearm would assist in rehabilitating minor, and that locating the firearm was "necessary to protect the public." Probation term 2 was tailored specifically for minor.

Next, we address whether the probation condition was proper under *Lent*: A condition of probation will not be held invalid unless it "'(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself

criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.'" (*Lent*, *supra*, 15 Cal.3d at p. 486, citing *People v. Dominguez*, *supra*, 256 Cal.App.2d at p. 627.) All three conditions must be present for a probation condition to be invalid. (*Lent*, at p. 486, fn. 1.)

In this case, the firearms were the proceeds from the burglary, and therefore, directly related to that crime. (See *In re Josh W*. (1997) 55 Cal.App.4th 1, 6.) Although minor claimed that no guns were taken, the court was not required to accept minor's self-serving statement, especially when the victim had an itemized list of the rifles that were missing after the burglary. (*In re L.K.* (2011) 199 Cal.App.4th 1438, 1446.) Minor, therefore, fails to meet the requirements under *Lent*, *supra*, 15 Cal.3d. 481.

Based on the above, we find that that the juvenile court did not abuse its discretion in imposing probation term 2.

IV

DISPOSITION

The judgment is affirmed.

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MCKINSTER
Acting P. J.

We concur:

RICHLI
J.

CODRINGTON
J.